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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 277

RUTH MONTGOMERY, as Executrix of the Estate of ORION V. MONTGOMERY, *etc.*,

Petitioners,

v.

GOODYEAR AIRCRAFT CORPORATION,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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August 7, 1968

TABLE OF CONTENTS

	PAGE
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statement of the Case	3
Reasons for Denying the Petition for a Writ of Certiorari	6
Additional, Independent Ground for Affirmance	12
CONCLUSION	14
APPENDIX A	15

CITATIONS

Cases:

Duignan v. United States, 274 U.S. 195 (1927) 10

Feres v. United States, 340 U.S. 135 (1950) 3, 13, 14

Graver Tank & Manufacturing Co., Inc. v. Linde Air Products Co., 336 U.S. 271 (1949) 11, 12

Hoffa v. United States, 385 U.S. 293 (1966) 11, 12

Langnes v. Green, 282 U.S. 531 (1931) 12

Lawn v. United States, 355 U.S. 339 (1958) 10

MacPherson v. Buick Motor Co., 217 N.Y. 382, 111 N.E. 1050 (1916) 13

Magnum Import Company, Inc. v. Coty, 262 U.S. 159 (1923) 11-12

Montgomery v. Goodyear Tire & Rubber Company, 231 F. Supp. 447 (S.D. N.Y. 1964) 2, 4

PAGE

Nyyssonen v. Bendix Corporation, 342 F.2d 531 (1st Cir.) *cert. den'd,* 382 U.S. 847, *reh. den'd,* 382 U.S. 934 (1965) 9

Roberts v. Ross, 344 F.2d 747 (3d Cir. 1965) 8, 9

Statutes, Regulations and Rules:

Armed Forces, 10 U.S.C. §2304(a)(14) (1964) 12

Armed Forces, 10 U.S.C. §2306(c)(d) (1964) 12

Death on the High Seas by Wrongful Act, 41 Stat. 537 (1920), 46 U.S.C. §761 (1964) 4

Judiciary and Judicial Procedure, 28 U.S.C. §1254(1) (1964) 2

Armed Services Procurement Regulation, 32 CFR, Subchapter A 12, 14

Armed Services Procurement Regulation 7-203.22, 32 CFR §7.203-22 12

Federal Rules of Civil Procedure for the United States District Courts:

Rule 52(a) 9, 11

Rule 52(b) 10

Rules of the Supreme Court of the United States:

Rule 19 12

Rule 24(1) 12

Rules of the U. S. Ct. of App., 2d Cir., Rule 17(a), 28 U.S.C.A. 9-10

Rules of the U.S.D.C., S.D.N.Y., General Rule 2(b), *Fed. Local Ct. Rules,* N.Y.—p. 21 (1964) 6

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Respondent.

BRIEF OF RESPONDENT IN OPPOSITION

Opinions Below

The opinion of the United States District Court for the Southern District of New York, setting forth the basis for its judgment in favor of respondent Goodyear Aircraft Corporation (hereafter "Goodyear Aircraft"), dated June 14, 1967 (Pet. App. C*), and the unanimous opinion of the United States Court of Appeals for the Second Circuit of April 10, 1968, affirming that judgment (Pet. App. D),

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* "Pet." refers to the petition for a writ of certiorari, and "Pet. App. —" to that appendix to that petition bearing the letter A, B, C or D, indicated. Prefix "R" identifies pages of the Record. Prefix "A" refers to Goodyear Aircraft's appendix in the Court of Appeals; A 1 to A 2757 are page-for-page Xerox-Multilith reproductions of about 1900 pages of the trial transcript [R 1 to R 2757]; A 2759 to A 3127 are printed extracts from the Pre-trial Order and other papers in the Record, and from depositions and exhibits to the trial record. Suffix "a" refers to petitioners' appendix in the Court of Appeals.

have not yet been reported. An earlier opinion of the District Court, dated May 28, 1964, determining the motions of Goodyear Aircraft and the other respondents below for summary judgment, is reported at 231 F. Supp. 447.

Jurisdiction

The judgment of the Court of Appeals entered on April 10, 1968 (Pet. App. D), affirmed the judgment of the District Court in favor of Goodyear Aircraft, which had been entered on July 18, 1967 (Pet. App. A) upon the District Courts' findings of facts and conclusions of law filed on June 30, 1967 (Pet. App. B) and pursuant to the District Court's memorandum order and eight-page opinion, dated June 14, 1967 (Pet. App. C). The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. § 1254(1) (1964).

Questions Presented

1. Does the unanimous affirmance by the Court of Appeals of the judgment of the District Court sitting in admiralty as the trier of the fact without a jury, which had been entered upon the district judge's conclusion that petitioners had failed to sustain their burden of proof as to the liability of Goodyear Aircraft, and which involved determinations of the credibility of witnesses, most of whom testified in person at a 17-day trial, involve such a departure in either court from the accepted and usual course of judicial proceedings as to call for exercise of this Court's power of supervision?

2. Does an issue not briefed or argued by the parties below concerning the District Court's adoption of formal findings of fact and conclusions of law substantially in

the form which had been submitted by Goodyear Aircraft pursuant to a direction contained in the District Court's opinion resolving the central factual issues, but which had been derived in material part from the content of that opinion, present an issue of such a departure by the District Court from the accepted and usual course of judicial proceedings as to call for exercise of this Court's power of supervision?

3. In the case, only, that both of the foregoing questions are not answered in the negative:

May the judgment of the District Court be sustained on the independent grounds that petitioners' claims (a) are barred by the public fiscal policy of the United States and the rule of *Feres* v. *United States*, 340 U.S. 135 (1950), and (b) fail to state a cause of action for manufacturer's product liability?

Statement of the Case

These manufacturers' product liability actions involve the crash of the U.S. Navy ZPG-3W airship BuNo 144242 (the "242") on the high seas off the coast of New Jersey at 2:29 P.M. on July 6, 1960. The 242 was the prototype of the ZPG-3W model non-rigid airship, the largest ever made, an advanced weapons system which was designed and manufactured for the Navy by Goodyear Aircraft under a cost-plus-fixed fee contract. The 242 had been delivered to the Navy on September 24, 1959, and utilized for over 9 months thereafter for the ZPG-3W Navy Board of Inspection and Survey flight tests and subsequent radar early warning, missile nose cone recovery, and training operations by the Fleet. The other two respondents below had manufactured components. Petitioners' decedents were 11

of the 18 members of the 21-man crew who met their deaths in the crash.

The actions were commenced at various times between March 2, 1961 and July 2, 1962, and invoked the District Court's admiralty jurisdiction under the Death on the High Seas Act, 41 Stat. 537 (1920), 46 U.S.C. § 761 (1964), and the General Maritime Law [A 2761]. They were consolidated and assigned to one judge for all purposes on August 15, 1963 [27a]. Respondents' motions for summary judgment were determined on May 28, 1964 (231 F. Supp. 447). After extensive discovery, the parties agreed on stipulations of fact aggregating over 200 pages, to which were attached a large number of documents selected from thousands of pages of materials disclosed during discovery by respondents below. (Subsequent to the trial on the merits and the District Court's decision set forth in its opinion, a large part of the text of these stipulations was incorporated into the proposed findings of facts submitted by Goodyear Aircraft and adopted by the District Court. Sources of findings are detailed in Appendix A hereto.)

The pre-trial order entered on consent of all the parties [A 2759-72] limited the trial to the "questions of law and fact relating to the allegations of . . . liability," reserving to a second trial phase, if necessary, questions "relating to the [petitioners'] claims of damages" [A 2760]. The parties filed comprehensive memoranda on the facts and law [R 6948-63, 7716-817, 8025-49] prior to the 17-day trial (April 10 to May 2, 1967). At the close of petitioners' case the libels were dismissed as to two of the three respondents below, The Goodyear Tire & Rubber Company and Edwards Company, Inc. [A 489-91]. No appeal was taken from this decision, which is not questioned here.

After petitioners and Goodyear Aircraft had furnished the court with post-trial memoranda and reply memoranda aggregating over 400 pages [R 7930-8024, 5462-682, 7054-111, 9375-4061], the District Court rendered its decision dismissing the libels against Goodyear Aircraft in its memorandum order and eight-page opinion of June 14, 1967 (Pet. App. C). Pursuant to the order at the foot of this opinion, Goodyear Aircraft submitted proposed findings and conclusions on June 27, 1967, which were filed by the court with slight changes on June 30, 1967 (Pet. App. B p. 30). Judgment was entered on July 18, 1967 (Pet. App. A), and petitioners appealed on August 1, 1967.

From the record of nearly 10,000 pages, the parties prepared printed and Xerox-Multilith appendices of about 2,500 pages. Both parties submitted full-length briefs, and petitioners submitted a short reply brief. The case was argued orally on February 21, 1968. The Court of Appeals affirmed the District Court unanimously on April 10, 1968 in a comprehensive opinion which concentrated on the District Court's analysis of the central facts in issue (Pet. App. D).

The petition for a writ of certiorari was filed in this Court on July 8, 1968. Without raising any legal questions of broad, general significance, petitioners now seek yet a third hearing on the facts concerning "the cause of the crash" (Pet. p. 7). In justification of their request that this Court review concurrent factual determinations of two courts below, they here assert for the first time a contention which they did not presume to raise on their appeal to the Second Circuit or in other corrective procedures available below. They now claim that the District Court, despite its eight-page, 1900-word opinion, failed to set down an independent analysis of the facts which is "sufficiently comprehensive to provide a basis for decision" (Pet. p. 7).

Reasons for Denying the Petition for a Writ of Certiorari

The record in this case clearly reflects the conscientious performance by the district judge of his responsibilities as "a judge for all purposes"* during four years of pre-trial motions and conferences, a trial of over three weeks, and post-trial briefing and analysis of the record, and is marked particularly by the extraordinary patience which the District Court showed to counsel and the concern which the District Court expressed for petitioners' rights. Time after time in pre-trial proceedings, for example, when faced with objections on the part of respondents to petitioners' "unwarranted delays" in answering interrogatories [A 2886], the District Court refused to "allow these [petitioners] to suffer because counsel forgot" [A 2885; see also A 2870, 2874-89], and

> "allowed the [petitioners] every latitude . . . in order to come to the day when I could behold the living proof." [266a]

The complex and voluminous proof involved the long history of the 242, the prototype ZPG-3W airship, from the inception of design work in 1955 [Resp. Ex. Z, A 2987-88, 1017] to the crash on July 6, 1960, and the salvage investigation immediately thereafter. However, the actual factual disputes between the parties had been narrowed by pre-trial stipulation of all parties to questions as to (i) the events of the last two or three minutes of the July 6, 1960 flight ending with the crash, and (ii) circumstances involved in the fabrication in November or December, 1956 of an approximately 40-inch section of one of the seams of

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* Gen. R. 2(b), S.D.N.Y., *Fed. Local Ct. Rules*, N.Y.—p. 21 (1964) [3a, 24a, 27a].

the airship's 403-foot rubberized fabric envelope (Pre-trial Order [A 2762-69]). Other relevant facts were the subject of either extensive written stipulations of fact or evidence which was uncontradicted.

Indeed, pursuant to the Pre-trial Order [A 2759-72], virtually the entire trial was devoted by consent of the parties to testimony looking to

> ". . . the resolution of this threshold question—whether the 133 foot tear developed upon impact or while the airship was in flight—. . ." (Pet. App. C p. 32; see also Pet. p. 4).

It was upon this resolution

> ". . . that liability depends. Failure to sustain their imperative burden of proof thereon would warrant dismissal of libelants' claims." (Pet. App. C p. 32)

After hearing all the proof offered by the parties for 17 trial days, involving testimony of 30 witnesses, 23 of whom, including 11 eyewitnesses and one surviving member of the crew, testified in person, and after considering the parties' exhaustive arguments and analyses in over 400 pages of post-trial briefs, the District Court presented its answer to this "one basic"* or "threshold question" of fact in a thorough *opinion* which analyzed in particular the testimony of those eyewitnesses whom it found to be the most credible, the surviving members of the crew, and the three principal engineering witnesses. This *opinion* concluded:

> ". . . that libelants have not sustained their burden of proof. They have not established that the tear in the airship developed before impact. They have failed to prove any manufacturing defect in the airship." (Pet. App. C, p. 38),

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* Pet. p. 4.

and emphasized that:

> "The greatest impact of proof here came from the accredited eyewitnesses—not alone what they said, but the conviction with which they testified." (*Ibid.*)

The district judge as trier of the fact found, as stated in his *opinion,* that "while the airship was in flight at about 500 feet it lost an excessive amount of pressure" which "was not compensated for" in accordance with usual airship operating procedures, resulting "in a banana shape . . . which most of the impressive eye witnesses observed" and which "persisted for *at least two minutes** before the airship lost so much pressure that it began its final plunge to the sea" (Pet. App. C p. 37). The court held this finding was supported "overwhelmingly" by the credible eyewitness testimony (Pet. App. C pp. 34-35), and therefore rejected petitioners' hypothesis that a "high speed" 133-foot-long tear along the forward top center line of the airship envelope developed in flight, since such a tear would have developed in "*three to four seconds*" and would have been followed by a crash in "*about fifteen seconds*" (Pet. App. C pp. 32-33). On the contrary, the district judge found "that the tear in question was caused by 'contact with the water . . .'" (Pet. App. C p. 36), and was thus an effect, not a cause, of the crash. He also found that petitioners "did not prove that any manufacturing defect was the cause of the accident" (*ibid.*)

By a direction contained in his *opinion* (Pet. App. C p. 30) the district judge sought and only *thereafter* received proposed findings and conclusions prepared by Goodyear Aircraft's proctors. These were quite properly adopted by the trial judge without change of extensive nature,** since the proposed findings, in turn, were derived in major

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* Emphasis in quotations is supplied throughout this brief.

** *Cf. Roberts* v. *Ross,* 344 F.2d 747, 752 (3d Cir. 1965) (cited at Pet. p. 7).

part from his own *opinion* (particularly insofar as they deal with the "one basic question"), and pre-trial stipulations of fact.* Indeed, the Court of Appeals observed,

> "The basis of the [District Court's] determination appears from the court's *opinion*". (Pet. App. D pp. 42-43)

Given the narrow scope of the factual issue which, by agreement of the parties, was to be tried [A 2762-69] (Pet. p. 4), therefore, the District Court fully complied with Rule 52(a) of the Federal Rules of Civil Procedure, which provides that it is "sufficient if the findings of fact and conclusions of law appear" within the compass of an "*opinion* or memorandum of decision" such as that filed by the District Court in this case.**

Moreover, the assistance rendered by Goodyear Aircraft's proctors to the district judge in formulating his formal findings,† is not only in harmony with Rule 52(a), contrary to petitioners' claim, it does not even present a question ripe for this Court's review. Petitioners were required to set forth in their brief in the Court of Appeals

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* As shown in the schedule in Appendix A to this Brief, the key findings of fact on disputed issues were drawn from the *opinion* itself, in most instances, verbatim. *Cf. Roberts* v. *Ross, supra*, at 752, fn. 4. Variations in wording were suggested, and adopted, only with respect to technical matters based upon highly technical evidence. *Cf. Nyyssonen* v. *Bendix Corporation*, 342 F.2d 531, 532-33 (1st Cir.), *cert. den'd*, 382 U.S. 847, *reh. den'd*, 382 U.S. 934 (1965). Since a large measure of facts were stipulated, the bulk of the findings are derived, verbatim, from the parties' written stipulations of fact. Some findings related to contractual relations between Goodyear Aircraft and the Navy were derived from uncontradicted evidence on the subject, as well as stipulated facts.

** Petitioners comment, "the Court of Appeals relied on the Trial Judge's *opinion* for the cause of the disaster" (Pet. p. 7, see also first footnote, p. 10, *infra*).

† Noted in a hortatory footnote in the opinion of the Court of Appeals (Pet. App. D p. 43, fn.).

> "(1) A concise abstract or statement of the case, presenting succinctly the questions involved, the manner in which they are raised, and the errors claimed; . . ." (2d Cir. R. 17(a), 28 U.S.C.A.)

Nowhere in that brief, however, or in their reply brief, is there any reference to the procedure followed by the trial court in its formal findings of fact and conclusions of law.* As a result, Goodyear Aircraft had no occasion** to call the attention of the Court of Appeals to the close correlation between the formal findings and the District Court's opinion on the facts, facts stipulated by the parties, and uncontradicted evidence, set forth in Appendix A to this Brief. This alone is sufficient reason, it is submitted, to apply this Court's long-established practice of not reviewing a question which was not pressed below. *Duignan* v. *United States*, 274 U.S. 195, 200 (1927); *Lawn* v. *United States*, 355 U.S. 339, 362, fn. 16 (1958).

On appeal, upon a voluminous record accumulated over seven years of litigation, including appendices comprising the bulk of the trial record, after full briefing and oral argument, the Court of Appeals rejected all of petitioners' claims of error "and affirm[ed] the judgment" of the District Court

> "in favor of respondents, holding that the libelants had failed to sustain *their burden of proof* as to Goodyear Aircraft." (Pet. App. D p. 40)

Indeed, the Court of Appeals noted that petitioners' "version" of how the accident happened "depend[s] to a consid-

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* There is not a single citation to the findings of fact (Pet. App. B) [33a-52a] in either document, although citations to the *opinion* of June 14, 1967 (Pet. App. C) [153a-160a] occur at least 10 times in their brief below (pp. 1, 18, 19, 21, 27, 49, 50, 55, 58, 59).

** Petitioners also had made no motion for amendment of the findings under FRCP 52(b).

erable degree on conjecture" (*id.* at p. 44), and expressed the "wish that the proof were more convincing here as to the true cause of the crash" (*id.* at p. 42). It is grotesque that petitioners now assert that this adverse commentary on their own failure to meet their burden of persuasion somehow impeaches the concurrent judgments of two courts below and justifies a further review of the case in this Court (Pet. p. 4).

The Court of Appeals' opinion deals in detail with the testimony of the three surviving crew members and the two engineers who were called by petitioners, includes a tabular analysis of key features of the testimony of each of the twelve eyewitnesses, and concludes, "We find no error and affirm the judgment" (Pet. App. D p. 40), citing Rule 52(a) of the Federal Rules of Civil Procedure, which permits reversal

> ". . . only if a reviewing court has a definite and firm conviction that an error has been made" (*id.* at pp. 47-48).

With respect to the present petition seeking a third judicial determination of the facts, a still more stringent standard applies:

> "A court of law, such as *this Court* is, rather than a court for correction of errors in fact finding, *cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error.*" (*Graver Tank & Manufacturing Co., Inc.* v. *Linde Air Products Co.*, 336 U.S. 271, 275 (1949).

See also *Hoffa* v. *United States*, 385 U.S. 293, 322 (1966), separate opinion of Clark, J.

No such error appears in this case (Pet. App. D pp. 40, 47-48). The most petitioners claim is that there was a "contradiction among the various eyewitnesses and experts" (Pet. p. 8), which was resolved contrary to their con-

tention by the trier of the fact, and by the Court of Appeals.

It is submitted, therefore, that the petition herein constitutes an effort "merely to give the defeated party in the . . . Court of Appeals another hearing" on the facts by reference to a supposed practice question not previously asserted by petitioners. Accordingly, the petition ought to be denied. *Magnum Import Company, Inc.* v. *Coty*, 262 U.S. 159, 163 (1923); *Graver Tank & Manufacturing Co., Inc.* v. *Linde Air Products Co., supra; Hoffa* v. *United States, supra*; Supreme Court Rule 19.

Additional, Independent Ground for Affirmance

If the petition herein were to be granted, respondent, in addition to its contentions outlined above that the judgments of the District Court and Court of Appeals were free from error, will urge an alternative, independent ground for affirmance, which is supported by the District Court's findings of fact.* *Langnes* v. *Green*, 282 U.S. 531, 538-39 (1931). This ground is here summarized as a further "matter or ground why the cause should not be reviewed by this court." Supreme Court Rule 24(1).

(a) Pursuant to the general public policy of securing the most economical development of advanced weapons systems, the cost-plus-fixed fee contract is authorized by statute, 10 U.S.C. §§ 2306(c)(d), 2304(a)(14)(1964), and is defined by mandatory clauses established as a matter of law in Armed Services Procurement Regulation. Thus, under General Provision 20 of the contract for the 242 [Ex. X, A2984-86, A1017], ASPR 7-203.22, 32 CFR § 7.203-22, the United States is obligated to pay Goodyear Aircraft's rea-

*Finding 37, Pet. App. B pp. 28-29. Neither court below reached these legal questions (Pet. Apps. B, C, D, pp. 30, 38, 42).

sonable and necessary costs for personal injury actions such as the ones at bar (Pet. App. D p. 40, fn. 1). Petitioners herein and other claimants whom they represent have regularly received and continue to receive compensation from the United States under the statutory "systems of simple, certain, and uniform compensation" provided by Congress, *Feres* v. *United States,* 340 U.S. 135, 144 (1950), for injured and deceased service personnel and their dependents [each petitioner's interrogatory answers, Record citations at p. 21, App. A hereto (Finding 37)]. In *Feres* v. *United States, supra,* this Court held that service personnel were barred from a direct action against the United States by reason of receipt of such compensation. The same policy considerations are persuasive* that they should be barred from an indirect recovery that as a matter of law must similarly be paid out of the Federal Treasury.

(b) In *Feres* v. *United States, supra,* at 141, this Court held that there was no "remotely analogous" liability *at private common law* for an action by servicemen, such as petitioners' decedents, against the United States for negligence in respect of a piece of military equipment, such as the 242. On this basis alone, the libels fail to state a cause of action against Goodyear Aircraft, especially when the equipment concerned is an advanced weapons system. Unlike the situation typically involved in landmark products liability cases such as *MacPherson* v. *Buick Motor Co.*, 217 N.Y. 382, 111 N.E. 1050 (1916), the 242 was the prototype of just such an advanced weapons system, developed under national defense urgency, for use only after extensive inspection and testing by the experts of the ultimate user, the

* It would indeed be anomalous if the amount of a serviceman's compensation payable or reimbursable from the Federal Treasury for injury from use of military equipment should vary drastically, depending on whether the equipment had been made or installed (i) in a contractor's plant, or (ii) in a Government shipyard, armory, or depot.

United States Navy, who are uniquely knowledgeable in the use of such weapons, and was not an established product for eventual consumption by an indeterminate class of general consumers without significant or expert user testing or inspection. Further, as shown above, the economic burden of any product liability of the manufacturer, due to ASPR standard contract clauses, is not diluted and distributed through insurance or volume of sales, but is borne by the consumer, the United States, which has already provided a program of compensation for servicemen injured in using such weapons, pursuant to a policy which bars direct, duplicative recovery against the United States, *Feres* v. *United States, supra,* and which, it is submitted, also bars indirect recovery of the type sought here.

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be denied.

Dated: New York, New York,
August 7, 1968

Respectfully submitted,

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APPENDIX A

Derivation of District Court's Findings of Facts and Conclusions of Law

KEY: The Findings of Fact and Conclusions of Law submitted by Goodyear Aircraft on June 27, 1967, and filed by the District Court on June 30, 1967, are reproduced at Petitioners' Appendix B, pages 11 through 30, inclusive. Numbers in the left column below correspond to the numbers of the findings on pages 11 through 29, and the numbers of the conclusions on pages 29 and 30, respectively, in Petitioners' Appendix B.

The District Court's Opinion of June 14, 1967, is reproduced at Petitioners' Appendix C, pages 31 through 38, inclusive. Citations below to "Op." and a number refer to a passage in that Opinion at the indicated page of Petitioners' Appendix C.

Stipulation No. 1 was read in full into the record at trial. Citations to "Stip. No. 1 ——" below are to the appropriate page in Goodyear Aircraft's appendix in the Court of Appeals (prefix "A") or petitioners' appendix in the Court of Appeals (suffix "a").

Stipulation No. 4, designated Respondent's Exhibit BJ, was admitted at R 2020 (A 2020). Citations below in the format "Stip. No. 4, A ——", are to the extract in Goodyear Aircraft's appendix in the Court of Appeals; citations in the format "Stip. No. 4, Resp. Ex. BJ, p. ——", refer to pages of the original exhibit.

Stipulation No. 5 consists of (a) the signed stipulation itself, designated Respondent's Exhibit BW, admitted at R 2582 (A 2582), and (b) separately bound documents incorporated in the stipulation by reference, designated collectively as Respondent's Exhibit BX, admitted at R 2584. Citations below in the format "Stip. No. 5, A ——", are to the extract from the signed stipulation itself in Goodyear Aircraft's appendix in the Court of Appeals. Citations below in the format "Stip. No. 5, Resp. Ex. BX, ex. ——, p. ——", refer to pages of the designated separately bound document incorporated by reference.

Other references follow the practice specified in the Rules of this Court.

FINDING 1

1st, 2nd, 3rd sentences	Op. 31.
4th sentence	Stip. No. 1, A11.
Table	Stip. No. 1, ex. A (marked Lib. Ex. 1, R 14).

FINDING 2	Stip. No. 1, A 11.
FINDING 3	Compare Op. 31-32; Resp. Exs. X, Z, A 2965-88, 1017; Resp. Ex. AQ, A 3018-19, 1059; Resp. Exs. S, T, U, V, A 1017; Resp. Exs. AE, AJ, AK, A 1059; Resp. Ex. BR, A 2406.
FINDING 4	Compare Op. 31-32; Resp. Exs. X, Z, A 2965-88, 1017; Resp. Ex. AQ, A 3018-19, 1059; Resp. Exs. S, T, U, V, A 1017; Resp. Exs. AE, AJ, AK, A 1059; Resp. Ex. BR, A 2406.
FINDING 5	Stip. No. 1, A 11.
FINDING 6	Compare Op. 31; compare Stip. No. 1, 161a; Evans: R 4731-33; Compare *Montgomery* libel, Articles 6 and 7, 69a.
FINDING 7	Stip. No. 1, 161a.
FINDING 8	Stip. No. 1, A 11-12.
FINDING 9	Compare Op. 31, 38; Compare *Montgomery* libel, Article 9, 69a-70a.
FINDING 10	
1st sentence:	Compare Op. 31, 38; Haylett: R 451, 455, 3720; Lib. Ex. 22, R 455; Petitioners' Appendix A to Pre-trial Order, A 2763.
2nd sentence:	Haylett: R 3719-20.
FINDING 11	Compare Op. 31-32; Stip. No. 5, A 3116-20; Stip. No. 1, 161a, A 948-49, 953-54; Petitioner's Appendix A to Pre-trial Order, A 2763; RADM Leydon: A 849-74, 881-84; Waldman: A 962-1012, 1019-59, 1099-1123; LCDR Bates: A 2860, 2864; Vincelli: A 309-13, 329-44, 363-65, 377-79; Hiering: A 2707-09, 2723; Bauch: A 1231-43, 1254-81; Evans: A 2792-859; 564a-80a; Mancini: A 2388-406; Jackson: A 839-44; Resp. Exs. S, T, U, V, X

	(excerpt at A 2965-86), A 1017; Resp. Exs. AE (excerpt at A 3002-03), AJ, AK, AL, AM, AO, AP, A 1059; Resp. Ex. BQ, A 2403, Resp. Ex. BR, A 2406; Resp. Ex. Z, A 2987-88, 1017; Resp. Ex. AC, A 2989-99, 1017; Resp. Ex. I, A 3000-01, 1059; Resp. Exs. AG, AI, AM, AQ, A 3004-11, 3015-20, 1059. Compare Resp. Ex. C and D, A 2924-35 (Resp. Ex. D also marked Stip. No. 5, Resp. Ex. BX, ex. 9), 376*a*, and see Lib. Exs. 16, 39, 585a-89a, R 414*a*, 593a-94a, R 1178.
FINDING 12	Compare Op. 31-32, 37; Petitioners' Appendex A to Pre-trial Order, A 2763; Stip. No. 5, A 3116-20 and Stip. No. 5, Resp. Ex. BX, ex. 4 (two parts); Waldman: A 970-1012; Pipitone: A 1982-2016, 2021-57; CDR Mills: A 2417-29, 2435-54; Vincelli: A 309-11; LC DR Bates, A 2863-64.
FINDING 13	
Except as noted below:	Stip. No. 1, 161a, A 948-49, 951-54.
2nd sentence, "(about ¼)":	Stip. No. 4, attachments "A-45, A 59", and photograph, inserted at A 3107.
"single subassembly seam":	Stip. No. 1, 161a; Evans: R 4733.
3rd sentence, "2501 and 3480"	Stip. No. 4, A 3100.
"September 1956":	Evans: R 4731-33.
6th sentence, "49 other flights"	Resp. Ex. AL, A 1059.
7th sentence, "all material times"	Stip. No. 4, A 3074.
FINDING 14	Evans: A 2792-859, 564a-82a; Resp. Ex. AC, A 2989-99, 1017; Vincelli: A 309-13, 329-44, 363-65, 377-79; Resp. Ex. D, also marked Stip. No. 5, Resp. Ex. BX, ex. 9 (excerpts at A 2927-35), A 376*a*; Hiering: A 2707-09, 2723; Stip. No. 4, A 3097-104.

FINDING 15	Evans: A 2792-859, 564a-82a, Mancini: A 2388-406; Jackson: A 839-44; Resp. Ex. X (excerpt at A 2965-86), A 1017; Resp. Ex. AI, A 3006-11, 1059; Resp. Ex. I, A 3000-01, 1059; Resp. Ex. AL, A 1059; Resp. Ex. BQ, A 2403; Resp. Ex. BR, A 2406.
FINDING 16	
1st sentence, "late 1955":	Stip. No. 5, A 3118.
2nd sentence, "February of 1956":	Lib. Exs. 16, 39, 585a-89a, R 414*a*, 593a-94a, R 1178.
3rd, 5th, 6th, 7th, 8th sentences:	Stip. No. 1, 161a; Fenn: 584a; Evans: A 2802-07, 2810, 2816-17, 2819-22, 2832-34, 2846-49, 2854-59, 564a-73a, 576a-82a; Lib. Ex. 40, 595a, R 1179.
4th sentence, "O&R":	Resp. Ex. D, also marked Stip. No. 5, Resp. Ex. BX, ex. 9, A 2933-35, 376*a*.
8th sentence, "no evidence":	Only evidence directly in point: Evans: 581a; Resp. Ex. AD, A 1017 (another copy marked Lib. Ex. 79, R 2726) (extracted at petitioners' brief in Court of Appeals, p. 16), maximum readings 68% and 69%.
FINDING 17	
Except as noted below:	Compare Op. 35-36; Bauch, A 1267-70, 1275-81.
"pre-erection proof test":	Resp. Ex. AI, A 3006-11, 1059.
"flight test":	Resp. Ex. AM, A 3015-17, 1059.
"3.0 inches":	Resp. Ex. AG, A 3004-05; 1059; Stip. No. 5, Resp. Ex. BX, ex. 4 (Supplement), pp. 46-48, 50A.
FINDING 18	Compare Op. 35-36, 38, and finding 33; see citations to findings 14, 15, 16, 17, 19.
FINDING 19	
1st and 2nd sentences:	Vincelli, A 329-31.
3rd sentence:	Stip. No. 1, A 949; Jackson, A 824-39, 885-99.

FINDING 20	Stip. No. 4, A 3074-76.
FINDING 21	Stip. No. 4, A 17, 18-19, 3076-77; Stip. No. 4, Resp. Ex. BJ, pp. 16-18.
FINDING 22	Stip. No. 4, A 3077, and attachment "A 61", inserted at A 3017.
FINDING 23	Stip. No. 4, Resp. Ex. BJ, p. 21 (extract at A 3077).
FINDING 24	Compare Stip. No. 4, Resp. Ex. BJ, pp. 22-60; Lib. Ex. 13, A 2920, 309. Compare Op. 32, 34, 35. See also Pet. p. 5.
FINDING 25	
1st sentence	Op. 32-33.
2nd sentence	Compare Op. 33-34.
3rd sentence	Op. 33.
FINDING 26	
1st sentence and 2nd sentence to "trouble":	Op. 33.
"wrinkled":	*E.g.*, CDR Murphy: Lib. Ex. 28, A 2951, 732; Keppler: A 665; Conte: A 911, 914.
"sagged":	*E.g.*, CDR Murphy: Lib. Ex. 28, A 2951, 732.
"'banana' shaped":	Op. 37; *e.g.*, Weeks: A 588.
"less than 1 inch of water":	Pipitone: A 2048-51; CDR Mills: A 2436.
"minimum required operating pressure":	Stip. No. 5, Resp. Ex. BX, ex.4 (Supplement), p. 47.
3rd sentence, "gradually descending":	Compare Op. 33, 34.
FINDING 27	Op. 36; see also Op. 34.
FINDING 28	
1st, 2nd and 3rd sentences, and 4th sentence to "lost so much pressure":	Op. 37.
Rest of 4th sentence:	Compare Op. 37; Pipitone: A 1990-2016, 2021-26; Resp. Ex. BI, A 2010; CDR Mills: A 2435-36; 2440-44.

FINDING 29	
Except as noted below:	Compare Op. 36; Bauch: A 1313-21; Pipitone: A 2068-69; Ex. AZ, A 1310, photograph at Stip. No. 4, A 3106-07; Resp. Ex. BA, A 3022-25, 1570, 1700.
"44,000 to 45,000 pound airship car":	Stip. No. 4, A 3106; Stip. No. 4, Resp. Ex. BJ, p. 19; Stip. No. 5, Resp. Ex. BX, ex. 4 (1st part), p. 185.
FINDING 30	
1st, 2nd, 3rd sentences:	Stip. No. 4, A 3098-104; Vincelli: A 341-68, 390-92.
4th sentence:	Op. 38, fn.
FINDING 31	
1st sentence:	Compare Op. 35-36, 38; Stip. No. 5, Resp. Ex. BX, ex. 4 (Supplement), pp. 46-50A; Bauch: A 1267-70, 1275-81; Resp. Ex. AG, AI, AM, A 3004-11, 3015-17, 1059.
2nd and 3rd sentences:	Stip. No. 4, A 3098-104; Vincelli: A 341-368, 390-92.
FINDING 32	
In general:	Compare Op. 38, fn.
1st sentence	LCDR Bates: R 3329, 3334; CDR Mills: A 2437-38; Resp. Ex. BU, also marked Stip. No. 5, Resp. Ex. BX, ex. 8, A 2437.
2nd and 3rd sentences	Haylett, R 450-55, 3663, 3770.
FINDING 33	Op. 36; see also citations at findings 13, 14, 15, 16, 17 and 19.
FINDING 34	Compare Op. 32, 37; Pipitone: A 2041-47; CDR Mills: A 2438-44.
FINDING 35	
1st sentence, "45-degree dive":	Stip. No. 4, A 3077; Saumier: 182a; Contreras, Resp. Ex. BE, A 3035, 1759-60.
"gradual descent":	Compare Op. 33, 34.
2nd sentence, "45-knot":	Stip. No. 4, A 3077.

3rd sentence,	
"eyewitness":	*E.g.* Weeks: A 596.
"slip tanks":	Stip. No. 5, Resp. Ex. BX, ex. 4 (1st part), p. 90; Waldman: A 986-90.
"dumping of ballast":	LCDR Bates: A 2861-62, 2867.
4th sentence,	
"slip tanks":	Stip. No. 4, A 3078; Contrereas: Ex. BD, A 3032, 1758.
5th sentence,	
"seat belts":	Stip. No. 4, A 3078.
6th sentence,	
"no evidence":	Compare Op. 35, 37; and see data in preceding 5 sentences, and citations for findings 34 and 36.
FINDING 36	Stip. No. 4, A 3079-95; CDR Mills: A 2445-54; Haylett: A 2773-91.
FINDING 37	
1st clause, "that . . . Naval personnel . . . ":	Compare Op. 31; see citations to Stip. No. 1 and No. 4 for findings 1, 20, 21, 22
2nd clause, "that . . . prototype . . . ":	See citations for finding 11.
3rd clause, "that . . . cost-plus-fixed-fee contract . . . ":	Resp.'s Ex. X, A 2984-86, 1017; opinion of District Court of May 28, 1964, and affidavit of William A. Runyan, sworn to January 24, 1964, A 2870-73; RADM Leydon: A 850-53, 854-60, 862-72, 882-84. See also opinion of Court of Appeals (Pet. App. D. p. 40, fn.1).
4th clause, "that . . . statutory benefits . . . ":	Answers of each petitioner to Goodyear Aircraft's interrogatories, R 7432, 8393, 8308, 8423, 8065-66, 7905-06, 8095-96, 8607-08, 7239-40, 7398, 7365-66.
CONCLUSION 1	Compare Op. pp. 32-38; compare contentions in Petitioners' Appendix A to Pre-Trial Order, A 2759, 2762-64.

CONCLUSION 2	Compare Op. 35, 36, 38; Stip. No. 1, A 948; Stip. No. 4, A 3074.
CONCLUSION 3	Compare Op., p. 38; see Goodyear Aircraft's contentions in Respondents' Appendix B to Pre-Trial Order, A 2759, 2769-72.